

Ronald J. Wronko (RW1859)
RONALD J. WRONKO, LLC
96 Park Street
Montclair, New Jersey 07042
(973) 509-0050
Attorneys for defendant
Shaw Creations, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EVERGLORY COMPANY,	:	
	:	Civil Action No. 07 Civ. 9361
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
SHAW CREATIONS, INC.,	:	
	:	
Defendant.	:	
	:	
	:	
	:	
	:	

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
CONSOLIDATE**

Defendant Shaw Creations, Inc., (“Shaw Creations”), by and through the undersigned counsel, files this memorandum of law in support of its motion to consolidate this action with the action captioned Sunny Company v. Shaw Creations, Inc., Civil Action No. 07 Civ. 9360 in the United States District Court for the Southern District of New York.

Federal Rule of Civil Procedure 42(a) provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such

orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

As the rule indicates, among the factors the court should consider in deciding whether to consolidate are: identity of the parties, the existence of common questions of law and fact, and the potential for creating confusion by combining multiple claims. Hooker Chemicals & Plastics Corp. v. Diamond Shamrock Corp., 96 F.R.D. 46, 48-49 (W.D.N.Y.1982). In its analysis, the court must “examine the special underlying facts with close attention before ordering a consolidation.” In re Repetitive Stress Injury Litigation, 11 F.3d 368, 373 (2d Cir.1993).

Both Everglory Company and Sunny Company are business corporations existing under the laws of the People’s Republic of China and maintain their principal place of business in Hong Kong, China. They have common ownership and operate as alter egos. Both companies have sued Shaw Creations for the collection of alleged overdue receivables. They are represented by the same counsel in both actions. Both affirmative claims are non-complex collection matters.

In both matters, defendant Shaw Creations has asserted an identical counterclaim for copyright infringement arising out of the same set of facts. It is alleged in the counterclaim that both Everglory and Sunny distributed Shaw Creations’ copyrighted artwork and manufactured and/or distributed goods containing the artwork. The discovery between the parties on the counterclaim will likely be identical in both proceedings. Additionally, on both the affirmative claim and the counterclaim, there will be common discovery issues regarding the course of dealings between the parties. The parties in both actions are substantially identical. There is common counsel representing the parties in both actions.

There is little likelihood of confusion that will arise if the two cases are consolidated. The affirmative claims are simple collection matters. There will be substantial conservation of resources if the matters are consolidated as identical discovery will be conducted in both cases and the course of dealing between the parties and counterclaim arise out of the same set of facts. Accordingly, defendant Shaw Creations respectfully requests that the two (2) actions be consolidated.

CONCLUSION

For the foregoing reasons, defendant Shaw Creations respectfully requests that the Court grant its motion for consolidation of this action with Sunny Company v. Shaw Creations, Inc., Civil Action No. 07 Civ. 9360.

RONALD J. WRONKO, LLC
Attorneys for Defendant
Shaw Creations

BY /s/ Ronald J. Wronko
Ronald J. Wronko

Dated: January 2, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum and Declaration was mailed first class, postage prepaid, and served via CM/ECF on this the 2nd Day of January 2008, to:

Bernard D'Orazio, P.C.
100 Lafayette Street
Suite 601
New York, New York 10013-4400

/s/ Ronald J. Wronko

Ronald J. Wronko, Esq. (RW 1859)

Ronald J. Wronko, LLC
96 Park Street
Montclair, NJ 07042
(973) 509-0050, ext. 120
(973) 509-0063 (facsimile)
ron@ronwronkolaw.com

Dated: January 2, 2008